

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD
BENCH

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH,
ALLAHABAD
(In Company Petition No. 55/Ald/2017)

Dated Tuesday , the 30th Day of May, 2017

Quorum: Mr. H. P. Chaturvedi, Member-Judicial

IN THE MATTER UNDER SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 7 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUCATING AUTHORITY) RULES, 2016

AND

IN THE MATTER OF:

LML LIMITED

A COMPANY INCORPORATE UNDER THE COMPANIES ACT, 1956

HAVING REGISTERED OFFICE AT: -

C-3, PANKI INDUSTRIAL ESTATE

KANPUR – 208022

UTTAR PRADESH

.....Corporate Applicant/Debtor

Claim: (a) To admit the Company Petition No. 55/Ald/2017; and pass an order for initiating Corporate Insolvency Resolution Process u/s 10 of "The Insolvency and Bankruptcy Code, 2016".

(b) To cause a public announcement of the initiation of Corporate Insolvency Resolution Process.

(c) To declare moratorium in the terms of Section 14 of the Code

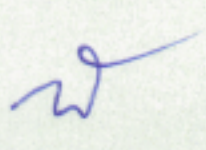
(d) Pass any such further order(s)/ which the Tribunal deems fit and proper in the facts and circumstances of the case.

Counsel Present: Advocate Shri Sumant Batra along with Shri Abhishek Anand for Applicant

ORDER

(Per Mr. H. P. Chaturvedi, Member-Judicial)

1. The present Application is filed by the Corporate Applicant/Corporate Debtor under Section 10 of Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



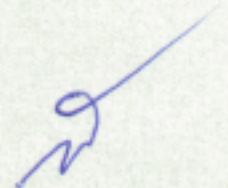
2. The Corporate Debtor/ Applicant submits that total amount of Debt is Rs. 35121.91Lacs, it has committed default in making payment of Principal Amount of Rs. 10308.82 Lacs further interest amount of Rs. 23900.31 Lacs. The same being in excess of Rs. 1,00,000/- (Rs. 1 lac) the corporate applicant has eligibility to initiate for the Corporate Insolvency Resolution Process as per the Insolvency and Bankruptcy Code, 2016.

3. The brief facts raising to the present Application are described in brief as under:

- I. LML Limited ("LML "or the "Company") (originally known and registered as Lohia Machines Pvt. Ltd. was incorporated on 29.09.1972. The name of the Company was changed in 26.06.1978 to Lohia Machines Limited and later in 06.05.1987 to LML Limited with the approval of Registrar of Companies, Kanpur.
- II. Due to shift in the 2 - wheeler market, manufacture of 4 stroke motorcycle became vital for LML. It entered into a technical collaboration with Daelim of South Korea (a Honda pedigree) for making 4- stroke motorcycle.
- III. Several proposals (2001-2004) were submitted by LML to its lenders but none could materialize in spite of all reasonable efforts of LML and it continued to suffer severe losses and erosion of liquidity.
- IV. Eventually, the lenders and LML entered into a Multi partite Agreement dated 28th March, 2005 which superseded and subsumed inter alia all previous agreement between LML and all the lenders.
- V. Due to losses the net worth of LML eroded and the Company filed a reference under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") with the Board for Industrial and Financial Reconstruction ("BIFR")


in the year 2006 which was registered on 15.09.2006 as Case No. 80 of 2006. On 08.05.2007, the BIFR declared the Company as a sick industrial company and appointed IDBI as the Operating agency ("OA").

- VI. In spite of severe constraints and difficulties, the promoters of LML relentlessly pursued efforts to revive the Company. In January 2011, LML submitted the Draft Revival Scheme (DRS) to BIFR. After several rounds of discussions and meetings on DRS, consensus was reached between LML and the lenders for settlement of their dues.
- VII. LML has 9 Lenders. It received written approval on various dates inter- alia regarding settlement of their dues from 7 Lender's ("settlement Agreement") representing approx. 96.69% (by value of the debt). Each settlement Agreement representing approx. 96.69% (by value of debt). Each settlement Agreement was acted upon by LML, respective lenders and the guarantors.
- VIII. LML did not receive approval from 2 Lenders, namely, ICICI (core principal Rs 304.24 lacs) and IIBI (core principal Rs 0.44 lacs), who represent 2.88% and 0.42 % (by value) of the debt, respectively. IIBI assigned its debt to Phoenix ARC Pvt. Ltd. through a purported Deed of Assignment ("DoA") which has been challenged by LML in the Civil Court No. 1731 of 2015 at Kanpur Nagar, Kanpur, and the matter is sub-judice.
- IX. In March 2014, EXIM Bank, one of the Lenders who had also executed and acted on their Settlement Agreement, assigned their debt through a purported DoA to Edelweiss Asset Reconstruction Company Ltd. ("EARCL") which has been challenged by the LML in the Civil Court (OS No. 929/2016) at Kanpur Nagar, Kanpur, and the matter is sub-judice.



- X. In December 2015, Stressed Assets Stabilization Fund ("SASF"), one of the Lenders, who had also executed and acted on their Settlement Agreement, unilaterally withdrew from the Settlement Agreement and the same has been challenged by the LML in the Civil Court (OS No. 768 of 2016) at Kanpur Nagar, Kanpur, and the matter is sub-judice.
- XI. State Bank of India, who had also executed and acted on their Settlement Agreement, has filed an OA No. 238 of 2017 dated 30.03.2017 with Debt Recovery Tribunal, Allahabad. The matter is pending and the next date of hearing is 21.06.2017.
4. Hence, the present petition /application. The Corporate Applicant/ Debtor has further submitted in the application that a written communication has been received from the proposed Interim Resolution Professional whereby he has agreed to accept such appointment as Interim Resolution Professional. It has been stated that there are no disciplinary proceedings pending against IRP.
5. We heard the Argument of Learned Counsels Sumant Batra and Shri Abhishek Anand on admission of the present Application and to declare Moratorium. We examined the contents of the present application and perused the documents enclosed therewith, in the light of the relevant sections of Insolvency and Bankruptcy Code, 2016.
6. A plain reading of Section 10 reads as under:

Section 10: Initiation of corporate insolvency resolution process by corporate applicant:

1. Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.
 2. The application under sub-section (1) shall be filed in such form, containing such particulars and in such
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manner and accompanied with such fee as may be prescribed.

3. The corporate applicant shall, along with the application furnish the information relating to—
 - a. its books of account and such other documents relating to such period as may be specified; and
 - b. the resolution professional proposed to be appointed as an interim resolution professional.

4. The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

- a. admit the application, if it is complete; or
- b. reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

5. The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

7. Further for the purpose of declaration of moratorium the relevant provisions of section 14 reads as under:

Section 14 Moratorium

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

2. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

3. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

4. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

7. In view of the above stated factual and legal position of the case, we find that the corporate debtor has complied with requirement of Section 10 of the Code. In view of the above the present Application deserved to be allowed, hence is allowed. We admit the petition for declaring Moratorium with Consequential Directions which are given as under:

- i. That the order of moratorium u/s 14 shall have effect from 30.05.2017 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as, the case may be.
- ii. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate

- debtor including execution of any judgement ,decree or order in any court of law, tribunal ,arbitration panel or other authority ; transferring , encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ; any action to foreclose , recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFESI Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- iii. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
 - iv. That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - v. That this Bench hereby appoints **Mr. Anil Goel** , Registration No.: IBBI/ IPA-001/IP-00020/2016-2017/1623, Address : AAA Insolvency Professionals LLP , E- 10A , Kailash Colony, New Delhi -110048, email.id anilgoel@akgindia.in as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016.
 - vi. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
 - vii. An authentic copy of this order be issued to parties including Interim Resolution Professional after the completion of necessary formalities.

In view of the above, the Application is admitted and accordingly stand disposed of.

Dictated to the Law (Clerk) Research Assistant, typed by her, corrected and pronounced by me in the open Court this Tuesday, the 30th day of May, 2017.

Sd_____

H.P. CHATURVEDI, (MEMBER-JUDICIAL)

Dated 30.05.2017

(APARNA TRIVEDI)